

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re)	Case No. 04-27694-C-11
APM, Inc.,)	
)	
Debtor.)	
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APM, Inc.,)	Adv. Proc. No. 05-2113
)	
Plaintiff,)	
)	
v.)	
)	
BRUNI GLASS PACKAGING, INC.)	
)	
Defendant.)	
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**MEMORANDUM DECISION GRANTING IN PART AND DENYING IN PART
MOTION FOR SUMMARY JUDGMENT**

On March 22, 2005, APM, Inc., plaintiff herein, filed a complaint for avoidance of preferential transfers pursuant to 11 U.S.C. § 547, recovery of avoided transfers pursuant to 11 U.S.C. § 550, and damages for breach of contract. Defendant, Bruni Glass Packaging, Inc., ("BGP II"), is the successor by merger of Vetrerie Bruni U.S.A., Inc. ("VB USA"), and Bruni Glass Packaging, Inc. ("BGP I"). In its complaint, plaintiff alleged that it sold to BGP I certain business assets. In connection with the sales transaction, BGP I was to pay monies to plaintiff for the purchase of the

1 business assets. Within ninety days of plaintiff's chapter
2 11 filing, BGP I paid a portion of the purchase price to VB
3 USA in satisfaction of plaintiff's outstanding indebtedness
4 to VB USA. Plaintiff claimed that the payments received by
5 VB USA constituted avoidable transfers pursuant to § 547.
6 Plaintiff also claimed it was entitled to recover the monies
7 paid to VB USA upon the avoidance of the transfers.

8 Plaintiff further alleged in its complaint that BGP I
9 and BGP II breached certain contracts between plaintiff and
10 BGP I.

11 Defendant filed an answer denying the allegations
12 raised by plaintiff. Defendant further set forth twenty-one
13 affirmative defenses.

14 On February 14, 2006, plaintiff filed a motion for
15 summary judgment, pursuant to Federal Rule of Civil
16 Procedure 56 as incorporated by Federal Rule of Bankruptcy
17 Procedure 7056, in which it asserted that there is no
18 genuine issue of material fact and that plaintiff is
19 entitled to judgment as a matter of law on the following
20 matters: All elements of its first cause of action alleging
21 fraudulent transfer under § 547(b), defendant's first
22 affirmative defense § 547(c)(1), defendant's third
23 affirmative defense under § 547(c)(4), and defendant's
24 fourth, fifth, sixth and twelfth affirmative defenses
25 alleging release of claims, unclean hands, estoppel, and
26 waiver, respectively.

1 Notice was timely served on defendant and a hearing
2 on the motion was scheduled for March 14, 2006. In
3 response, defendant filed an opposition. In its opposition,
4 defendant alleged that plaintiff could not establish a prima
5 facie case of an avoidable preference as set forth in its
6 first cause of action. Defendant further alleged that
7 triable issues of material fact exist with respect to the
8 remaining affirmative defenses subject to plaintiff's
9 summary judgment motion. Defendant withdrew its third
10 affirmative defense. Plaintiff filed a reply to defendant's
11 opposition. A hearing was held on March 14, 2006. The
12 court entered its findings of fact and conclusions of law on
13 the record.

14 The court may grant a motion for summary judgment if
15 there is no genuine issue as to a material fact and the
16 moving party is entitled to judgment as a matter of law.
17 Federal Rule of Civil Procedure 56(c), as incorporated by
18 Federal Rule of Bankruptcy Procedure 7056; Anderson v.
19 Liberty Lobby, 477 U.S. 242 (1986).

20 The plaintiff has not shown that there is no genuine
21 issue of material fact regarding its first cause of action
22 under § 547(b). Nor has plaintiff shown that there is no
23 genuine issue of material fact with respect to defendant's
24 first affirmative defense under 547(c)(1).

25 Accordingly, the plaintiff is not entitled to
26 judgment as a matter of law on those issues.
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1 The plaintiff has shown, however, that there is no
2 genuine issue of material fact regarding defendant's fourth
3 (release), fifth (unclean hands), sixth (estoppel), and
4 twelfth (waiver), affirmative defenses. Further, no genuine
5 issue of material fact exists with respect to defendant's
6 third affirmative defense (§ 547(c)(4)), because such
7 defense was withdrawn by defendant in its opposition to
8 plaintiff's motion.

9 Accordingly, the plaintiff is entitled to judgment as
10 a matter of law on those issues.

11 An appropriate order shall issue.

12 Dated: March 17 , 2006

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16 UNITED STATES BANKRUPTCY JUDGE
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CERTIFICATE OF SERVICE

On the date indicated below, I served a true and correct copy(ies) of the attached document by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed and by depositing said envelope in the United States mail or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's Office.

Daniel Egan
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Office of the United States Trustee
United States Courthouse
501 "I" Street, Suite 7-500
Sacramento, CA 95814

Dated: 3/20/06


Deputy Clerk

R. Lopez